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Filing date: **10/27/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91173105
Party	Plaintiff Honda Motor Co., Ltd.
Correspondence Address	Mark G. Matuschak Wilmer Cutler Pickering Hale and Dorr LLP 60 State Street Boston, MA 02109 UNITED STATES mark.matuschak@wilmerhale.com, cora.han@wilmerhale.com
Submission	Plaintiff's Notice of Reliance
Filer's Name	Dyan Finguerra-DuCharme
Filer's e-mail	dyan.finguerra@wilmerhale.com
Signature	/dyan finguerra-ducharme/
Date	10/27/2008
Attachments	notice of reliance Tab B.pdf ( 22 pages )(2000817 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 78/339,571

Published: May 30, 2006 at TM 674

Mark: DEALERDASHBOARD

HONDA MOTOR CO., LTD.,	)	Opposition No. 91/173,105
	)	
Opposer,	)	
	)	NOTICE OF RELIANCE
v.	)	
	)	
MICHAEL DALTON,	)	
	)	
Applicant	)	
	)	

**TAB B**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 78/339,571  
Published in the Official Gazette of May 30, 2006 at TM 674  
MARK: DEALERDASHBOARD

-----x  
Honda Motor Co., Ltd.,

Opposition No. 91173105

Opposer,

v.

Michael Dalton,

Applicant.

-----x

**OPPOSER'S FIRST  
SET OF INTERROGATORIES TO APPLICANT**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Opposer Honda Motor Co., Ltd. ("Opposer") hereby requests that Applicant Michael Dalton ("Applicant") answer the following interrogatories fully and separately, in writing and under oath on the 30<sup>th</sup> day from service hereof. These requests are continuing and impose upon Applicant the obligations stated in Rule 26(e) of the Federal Rules of Civil Procedure.

**DEFINITIONS AND INSTRUCTIONS**

- A. As used herein, "Opposer" includes Honda Motor Co., Ltd. and its related entities and their officers, directors, employees, agents and representatives.
- B. As used herein, "Applicant" includes Michael Dalton, and all related and affiliated legal or business entities and other persons acting or purporting to act on his behalf.

C. As used herein, “Applicant’s Mark” means Applicant’s DEALERDASHBOARD mark in any type face or design, alone or in combination with other words and/or designs, including but not limited to the mark that is the subject of U.S. Trademark Application Serial No. 78/339,571.

D. “And” as well as “or” shall be construed disjunctively or conjunctively as necessary to bring within the scope of the interrogatory all information that might otherwise be construed to be outside its scope.

E. The singular shall include the plural and the present tense shall include the past tense and vice versa in order to bring within the scope of the interrogatory all information that might otherwise be construed to be outside its scope.

F. (1) Whenever an interrogatory inquires about the identity of an individual, the information requested includes:

- (a) The person’s full name;
- (b) The person’s employer, or business affiliation and address;
- (c) The person’s position or title; and
- (d) The person’s last known address and telephone number.

(2) Whenever an interrogatory inquires about the identity of a corporation, division, agency, association or other entity, the information requested includes its full name and current address.

G. If any of the requested information is withheld under a claim of privilege or other protection, produce within 10 days of the date on which responses are required pursuant to these interrogatories, a log of the information withheld sufficient to evaluate the privilege claimed that, at a minimum, separately identifies: (a) all persons who know the information or participated in any conversation about or consideration of the

information, and each such person's job title, last known address and telephone number, and whether such person is an attorney; (b) the basis of any privilege claim; and (c) a description of the subject matter of the information.

H. If the information furnished in answer to all or any part of an interrogatory is not within Applicant's personal knowledge, state the name to whom all or any part of the information furnished is a matter of personal knowledge, and the name of the person(s) who communicated to you any part of the information furnished.

I. If any document, thing or source of information identified in answer to an interrogatory has been destroyed, with regard to such destruction state: (a) the date of such destruction; (b) the reason for such destruction; (c) the identity of the person or persons who destroyed the document, thing or source of information; and (d) the identity of the person or persons who authorized such destruction.

J. These interrogatories are continuing so as to require Applicant's further and supplemental responses in accordance with the Federal Rules of Civil Procedure.

K. "Communication(s)" means the exchange of information between any person or entity by or through any mode or medium including, but not limited to, the spoken word, written or electronic correspondence, face-to-face meetings and/or conveying information through third persons.

L. "Document(s)" shall be defined as synonymous in meaning and equal in scope to the use of that term in Fed. R. Civ. P. 34(a) and applicable case law, and shall include, without limitation, "things," electronic mail, drawings and information in computer-readable format, and "writings" and "recordings" as defined in Fed. R. Evid. 1001.

M. "Identify" shall mean with respect to a document, the production number of the document (if applicable) and if there is no production number, the type of

document, general subject matter, date of the document, author(s), addressee(s) and recipient(s) and its current location.

N. "Person" means: (a) any natural person or individual or (b) any entity, whether business, legal, governmental, or other, regardless of purpose and regardless of whether or not for profit, including, but not limited to, any corporation, partnership, sole proprietorship, organization, club, committee, joint venture, foreign corporation or foreign entity, or any associate, general partner, limited partner, employee, subsidiary, parent, or other affiliate of any such entity.

O. "Concerning" shall mean relating to, referring to, describing, evidencing or constituting.

#### **INTERROGATORIES**

1. Describe the nature of the business conducted by Applicant.
2. State each name under which Applicant has done or is doing business, and state the address for, and dates during which, Applicant was or is doing business under such name.
3. Identify (by name and title) each of Applicant's employees responsible for the promotion, sale and distribution of the products or services Applicant has sold or intends to promote or sell in connection with Applicant's Mark.
4. Identify each and every product or service sold bearing Applicant's Mark
5. State the first date on which Applicant offered for sale any product or service bearing Applicant's Mark.
6. State the specific manner in which Applicant's Mark has been used by Applicant.

7. Identify every person who was responsible for or who participated in the selection and adoption of Applicant's Mark.
8. Describe in detail the reasons Applicant selected Applicant's Mark and identify all trademark search reports pertaining to that selection.
9. Identify all searches of any type conducted by or on behalf of Applicant in connection with the decision to adopt, use, or apply for federal registration of Applicant's Mark.
10. Describe in detail any discussions Applicant had with others concerning the adoption and selection of Applicant's Mark, and identify any other marks considered for adoption and/or selection.
11. Identify the commercial impression Applicant intends to create by use of Applicant's Mark in commerce.
12. Identify and describe in detail the channels of distribution and the geographical areas of trade within which Applicant has sold any product or service bearing Applicant's Mark.
13. Identify the class of purchasers to whom Applicant intended to promote, advertise and/or sell products or services bearing Applicant's Mark, including the demographics of the ultimate consumers of products or services bearing Applicant's Mark.
14. Identify (by title, publisher, page number, issue date, URL, air date(s), broadcast media outlet(s), and any other relevant designation), those printed and electronic publications, and media advertisements (such as internet advertisements, cable, television and/or radio advertisements), in which Applicant has promoted products or services bearing Applicant's Mark.

15. Identify all wholesale outlets, retail outlets, distributors and websites that have promoted, advertised, sold and/or offered for sale products or services bearing Applicant's Mark.

16. Identify representative examples of each different promotional document and item used and being considered for use by Applicant in connection with the promotion and sale of products or services bearing Applicant's Mark.

17. Identify (by name, date and location) each marketing venue (such as a promotional event, trade show or fair) where Applicant has promoted any product or service bearing Applicant's Mark.

18. State in dollars and number of units each of Applicant's sales or projected sales of products or services bearing Applicant's Mark.

19. State in dollars Applicant's yearly advertising and promotional budget or projected yearly advertising and promotional budget for any product or service bearing Applicant's Mark.

20. Identify any market research (including surveys, studies, investigations and focus group inquiries) conducted by or on behalf of Applicant regarding Applicant's Mark, and state the results thereof.

21. Identify those persons having the most knowledge of any market research (including surveys, studies, investigations and focus group inquiries) conducted by or on behalf of Applicant regarding Applicant's Mark.

22. Describe any instance, whether by written correspondence, telephone call or other communications, in which any person or business entity:

- (a) has by word or deed suggested a belief that any product or service bearing Applicant's Mark was licensed or sponsored by or otherwise associated or



connected with Opposer or with Opposer's use of the terms "Dashboard" or "Dealer Dashboard"

(b) has by word or deed suggested a belief that any product or service bearing Applicant's Mark was advertised, distributed or offered for sale by Applicant under the control of or in any manner in association with or related to Opposer; or

(c) has been in any way confused, mistaken or deceived as to the origin or sponsorship of any product or service bearing Applicant's Mark. Examples of such confusion, mistake or deception include, but are not limited to, instances of misdirected mail or e-mail, misdirected inquiries, misdirected invoices or misdirected deliveries.

23. State the date and describe the circumstances in which Applicant first became aware of Opposer's use of the terms "Dashboard" and "Dealer Dashboard" and identify all individuals having relevant knowledge.

24. State whether Applicant considered the issue of, and/or received any opinions concerning, a likelihood of confusion between Applicant's Mark and Opposer's use of the terms "Dashboard" and "Dealer Dashboard."

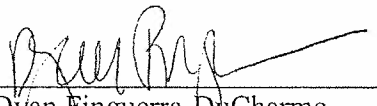
25. Identify each person from whom Applicant has obtained a statement and/or whom Applicant plans to use as a witness in this proceeding.

26. Identify each person who supplied information used in the preparation of the answers to these interrogatories and, if more than one such person was involved, indicate the specific interrogatories to which each such person contributed all or part of the information comprising the answer.

27. For each expert Applicant has retained to give testimony in this proceeding, provide the information required in Rule 26(a)(2)(B) of the Federal Rules of Civil Procedure.

Dated: November 21, 2006

WILMER CUTLER PICKERING  
HALE and DORR LLP

By:   
Dyan Finguerra-DuCharme  
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(212) 937-7203

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1875 Pennsylvania Ave., NW  
Washington, DC 20006  
(202) 663-6000

Attorneys for Opposer  
Honda Motor Co., Ltd.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing Opposer's First Set of Interrogatories has been served on November 21, 2006 by Facsimile and First Class

Mail to:

Michael Dalton  
Box 18137  
670 Northland Blvd.  
Cincinnati, OH 45218-0137

  
Doris L. McPherson

Affidavit of Michael Dalton  
In Response  
To  
Opposer's First Set of Interrogatories

I, Michael Dalton, being duly sworn and cautioned state as follows:

As to:

- 1.) Applicant is involved in consulting, sales, services, training, financing, merchandising and VAR for various firms in the retail, wholesale, sector and owns and operates a website DealerDashboard.com aimed toward the automotive consumer, automotive trade industry, independent dealer and manufacture franchise dealer.
- 2.) Michael Dalton, beginning unknown to current.  
Thomas-Michael Agency aprox; 1/90 to current.  
DealerDashboard.com aprox; 10/99 to current.  
PO Box 18137, Cincinnati, Ohio 45218-0137
- 3.) Applicant has no employees.
- 4.) Advisory, Consulting, training, website services which are tailored to each specific customer. A DealerDashboard Dealer to Dealer (D2D) online auction which includes services for dealers to monitor the return on investment (ROI), cost of goods sold concerning their sales, service and parts department investment in per. unit vehicle sold or inventoried  
(<http://dealerdashboard.com/auctioninfo.html>). Floor plan, retail, wholesale, financing and services for automotive dealers to identify their inventory financed and the cost of goods financed via. individualized web enabled tracking system

acting as agent for lenders (currently (DSC) Dealer Services Corp).

(<http://dealerdashboard.com/dsc.html>). Applicant provides a web site

(<http://DealerDashboard.com>) for consumers and trade to shop for all things

automotive via. reciprocal links, affiliate links, and URL opt-in posting.

Additionally, applicant provides co-branded email services

(<http://dealerdashboard.mail.everyone.net/email/scripts/loginuser.pl>), co-branded

auto shopping (<http://www.autoworld.com/partner.asp?p=dealerdashboard>) and

co-branded target marketing services

(<http://findmorebuyers.com/page.cfm/3?4187>) as agent or affiliate marketer.

5.) 10/05/1999

6.) Domain name, web site portal, dealer services and financing, consulting, training,

Dealer to Dealer online auction, management services and providing automotive

dealerships managerial information concerning their sales, service, and parts

department key financial indicators of how their dealership is performing and

providing a web site featuring information about automotive dealerships,

automobiles, automotive parts and accessories, at which users can link to the retail

or wholesale sites of others.

7.) Michael Dalton

8.) The Internet was in its infancy. The applicant was involved in ground floor

automotive Internet development. The applicant wanted to provide a one-stop

shop for dealers and consumers to engage and become the top of mind point for

dealers to gain the knowledge and tools to manage their dealerships profitably.

The applicant conceptualized an automotive dashboard with the gages and tools to

make informed decisions. The applicant also conceptualized that the target customer was the automotive dealer and the consumer factor was additional revenue potential as consumers could go to the same site and get access to participating dealers. Thus, the name DealerDashboard. The applicant wishes to note that opposers claim that dashboard is generic in nature: Was not the case when applicant selected the term DealerDashboard and further states that DealerDashboard may have been a contributing factor for, not as a result of, any alleged evolution in the term dashboard.

- 9.) Through web search, AOL, yahoo, info seek, etc. and applicant doesn't recall that goggle was born, as yet. Applicant searched the US Federal trademark site, and State of Ohio attorney generals site. Applicant also searched the international domain register and purchased every top-level domain, at that time, of the brand DealerDashboard.
- 10.) None, but reserves the right to amend as necessary through the course of discovery.
- 11.) Top-of mind, one stop shop location for the tools and gauges to efficiently conduct the profitable relationship between dealers, their operations and their communication with the consumer.
- 12.) Worldwide, but, mostly USA via. Website content, personal visits, direct mail and telemarketing.
- 13.) All automotive independent and manufacture licensed automotive dealers and the retail consumers.

- 14.) DealerDashboard.com, net, info, biz, .uk, org, all available search engines, AOL, yahoo, goggle, msn, Lycos direct mailers, personal logo branded apparel, business cards.
- 15.) All major search engines goggle, AOL, yahoo, msn, Lycos.
- 16.) (a) <http://DealerDashboard.com>
- (b) <http://search.aol.com/aol/search?invocationType=comsearch30&query=DealerDashboard&do=Search>
- (c) <http://search.aol.com/aol/search?query=Dealer+Dashboard&invocationType=spelling>
- (d) <http://www.google.com/search?q=dealerdashboard&rls=com.microsoft:en-us:IE-SearchBox&ie=UTF-8&oe=UTF-8&sourceid=ie7>
- (e) <http://www.google.com/search?hl=en&rls=com.microsoft:en-us:IE-SearchBox&sa=X&oi=spell&resnum=0&ct=result&cd=1&q=dealer+dashboard&spell=1>
- (f) <http://search.msn.com/results.aspx?q=dealerdashboard&src=IE-SearchBox>
- (g) <http://search.msn.com/results.aspx?q=dealer+dashboard&go=&form=QBRE>
- (h) <http://search.lycos.com/index.php?src=ie&query=dealerdashboard>
- (i) <http://search.lycos.com/?src=ie&query=dealer+dashboard&x=59&y=12>
- (j) <http://search.yahoo.com/search?p=dealerdashboard&ei=utf-8&fr=b2ie7>
- (k) [http://search.yahoo.com/search:\\_ylt=A0geu97E6.tHChEAwXZXNyOA?p=dealer+dashboard&y=Search&fr=b2ie7&ei=UTF-8](http://search.yahoo.com/search:_ylt=A0geu97E6.tHChEAwXZXNyOA?p=dealer+dashboard&y=Search&fr=b2ie7&ei=UTF-8)

(l) Embroidered logo branded apparel

(m) Direct mail pieces.

(n) Business Cards

(o) Applications for floorplan finance.

<http://dealerdashboard.com/DSCapplicationplusInstruc.pdf>

(p) Wayback archive portal

[http://web.archive.org/web/\\*/http://dealerdashboard.com](http://web.archive.org/web/*/http://dealerdashboard.com)

(17.) Spent approximately \$500.00 in prize giveaways labeled DealerDashboard.com to a Corvette club in Michigan early in 1999 or 2000 for their annual car show. Records were disposed of, but will submit should they become available.

(18.) DealerDashboard has no direct customers but currently serves approximately 5 dealers, which were sold under the dealerdashboard brand as agent for Dealer Services Corporation. Applicant has no estimate of future customer potential or gross revenue estimates. Applicant states that the dealerdashboard brand is promoted 24 hrs. per day 365 days per year via the website DealerDashboard.com and receives weekly inquiries regarding services offered which may or may not lead to a continuing customer. Many customers are rejected due to credit difficulties.

(19.) \$200.00 estimate.

(20.) None, but reserves the right to amend as necessary through the course of discovery.

(21.) Michael Dalton

(22.) Web search, by applicant, in May 2006 revealed a non-secure site listing in search engines under the term dealerdashboard during normal business involving periodic defense of trademark brand operated by opposer.



<http://www.in.honda.com/RRAADCTM/Content/AAD/AD85/DashboardiNadmin.htm>).

The opposer was marketing a product utilizing the term dealer dashboard, which created initial interest confusion. The opposer was marketing a product titled dealer dashboard in a manner that Honda dealers would associate the brand dealer dashboard with Honda the manufacture and not the founder and applicant; thus, resulting in delusion of the applicants brand. Upon applicants cease and desist demand the opposer ceased using dealer dashboard and instead used the term Dealer Principal and GM - Dashboard Application. This conversion resulted in the continuation of initial interest confusion as Meta spiders continued to list opposers site within the top ten search listings, on the search term dealerdashboard, due to the Meta spider crawl of Dealer and Dashboard. Applicant, Michael Dalton, then advised Honda to cease and desist the continued initial interest confusion. Honda currently does not appear in search engines under the term dealerdashboard or dealer dashboard. Applicant is currently unaware if Honda is currently promoting the brand dealerdashboard or dealer dashboard internally through secure methods to circumvent applicants brand.

(23.) A Web search, by applicant, in May 2006 revealed a non-secure site listing in search engines under the term dealerdashboard during normal business involving periodic defense of trademark and brand. The opposer was marketing a product utilizing the term dealer dashboard, which created initial interest confusion. The opposer was marketing a product titled dealer dashboard in a manner that Honda dealers would associate the brand dealer dashboard with Honda the manufacture and not the founder and applicant thus resulting in delusion of the applicants brand. Upon applicants cease and desist demand the opposer ceased using dealer dashboard and instead used the term Dealer Principal and

GM - Dashboard Application. This conversion resulted in the continuation of initial interest confusion as Meta spiders continued to list the site within the top ten search listings due to the Meta spider crawl of Dealer and Dashboard. Applicant then advised Honda to cease and desist the continued initial interest confusion. Honda currently does not appear in search engines under the term dealerdashboard or dealer dashboard.

Applicant is currently unaware if Honda is currently promoting the brand dealerdashboard or dealer dashboard internally through secure methods to circumvent applicants brand.

(24.) Yes, applicant considered the issue of initial interest confusion and made a cease and desist demand on opposer. A Web search, by applicant, in May 2006 revealed a non-secure site listing in search engines under the term dealerdashboard during normal business involving periodic defense of trademark and brand

(<http://www.in.honda.com/RRAADCTM/Content/AAD/AD85/DashboardiNadmin.htmhttp://trade>) operated by opposer.

The opposer was marketing a product utilizing the term dealer dashboard, which created initial interest confusion. The opposer was marketing a product titled dealer dashboard in a manner that Honda dealers would associate the brand dealer dashboard with Honda the manufacture and not the founder and applicant; thus, resulting in delusion of the applicants brand. Upon applicants cease and desist demand the opposer ceased using dealer dashboard and instead used the term Dealer Principal and GM - Dashboard Application. This conversion resulted in the continuation of initial interest confusion as Meta spiders continued to list opposers site within the top ten search listings due to the Meta spider crawl of Dealer and Dashboard. Applicant then advised Honda to cease and

desist the continued initial interest confusion. Honda currently does not appear in search engines under the term dealerdashboard or dealer dashboard. Applicant is currently unaware if Honda is currently promoting the brand dealerdashboard or dealer dashboard internally through secure methods to circumvent applicants brand.

(25) Michael Dalton

(26) Michael Dalton

(27.) None, but reserves the right to amend as necessary through the course of discovery.

Further sayeth naught:



Michael Dalton

Sworn before me this 28<sup>th</sup> day of March, 2008

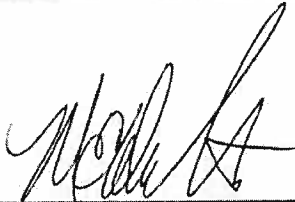
Before Eileen E. Pine Notary Public



EILEEN E. PINE, Notary Public  
In and for the State of Ohio  
My Commission Expires Nov. 15, 2011

**Certificate of Service**

I, Michael Dalton certify that I have submitted his response to opposer's First Set of Interrogatories via. electronic email upon attorneys for opposer, Mark Matuschak at [mark.matuschak@wilmerhale.com](mailto:mark.matuschak@wilmerhale.com), and Cora Han at [cora.han@wilmerhale.com](mailto:cora.han@wilmerhale.com) this 28<sup>th</sup> day of March 2008.

A handwritten signature in black ink, appearing to read 'Michael Dalton', is written over a horizontal line.

/ Michael Dalton /

Electronically Signed

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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Published: May 30, 2006 at TM 674  
Mark: DEALERDASHBOARD

HONDA MOTOR CO., LTD.,	)	
	)	Opposition No. 91173105
Opposer,	)	
	)	
v.	)	
	)	
MICHAEL DALTON,	)	
	)	
Applicant	)	
	)	

**OPPOSER’S FIRST SET OF REQUESTS FOR ADMISSIONS TO APPLICANT**

Pursuant to Rule 36 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Honda Motor Co., Ltd. (“Opposer”) serves its First Set of Requests for Admissions to Michael Dalton (“Applicant”).

**DEFINITIONS AND INSTRUCTIONS**

1. Honda incorporates by reference the definitions and instructions set forth in Opposer’s First Set of Interrogatories to Applicant.

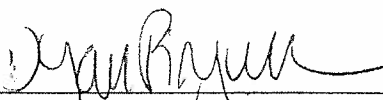
## REQUESTS

### Request No. 1

Each document Applicant has produced in response to Opposer's First Set of Requests for the Production of Documents and Things is authentic for purposes of admission into evidence during the testimony period in this proceeding.

Dated: November 21, 2006

WILMER CUTLER PICKERING  
HALE and DORR LLP

By:   
Dyan Ringuerra-DuCharme  
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(202) 663-6000

Attorneys for Opposer  
Honda Motor Co., Ltd.

Certificate of Service

I hereby certify that a true and complete copy of the foregoing Opposer's First Set of Requests for Admissions to Applicant has been served on November 21, 2006 by First Class Mail to:

Michael Dalton  
Box 18137  
670 Northland Blvd.  
Cincinnati, OH 45218-0137

  
Doris L. McPherson